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FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 10 9 53 AM '03  
FCC 03M-034  
02536

In the Matter of	)	EB Docket No. 03-96
	)	
NOS Communications, Inc.,	)	File No. EB-02-TC-119
Affinity Network Incorporated and	)	
NOSVA Limited Partnership	)	NAL/Acct No. 200332170003
	)	
Order to Show Cause and	)	FRN 0004942538
Notice of Opportunity for Hearing	)	

MEMORANDUM OPINION AND ORDER

Issued: August 21, 2003 ; Released: August 25, 2003

Under consideration are the Enforcement Bureau's Motion to Compel Production of Documents, filed on August 5, 2003, by the Enforcement Bureau ("Bureau"); a letter dated August 7, 2003, from Bureau counsel to the Presiding Judge; and a Joint Opposition to Enforcement Bureau's Motion to Compel Production of Documents, filed on August 14, 2003, by NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership (collectively "Companies").

The Bureau seeks an order compelling the Companies to produce documents responsive to document request numbers 9, 10, 20, and 35-38 set forth in the Bureau's First Request(s) for Production of Documents, filed on July 3, 2003.<sup>1</sup> The Companies oppose the Bureau's motion, contending that compliance with their requests would be unduly burdensome, and that their requests are overly broad, unnecessary, or irrelevant. For the reasons which follow, the Bureau's motion will be granted in part and denied in part.

Document Request 9. The Companies' objections are sustained in part and overruled in part. Title II of the Communications Act, unlike Title III, contains no provision permitting the Commission to evaluate the general character qualifications of a Title II licensee. In addition, the Commission's rules do not ask for character information from entities seeking authority to provide common carrier services. Therefore, the Bureau's request for documents relating to *all* felony convictions of the principals of the Companies is far too broad and does not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules.

However, the Companies will be required to produce documents relating to criminal convictions "involv[ing] dishonesty or false statement" insofar as they pertain to their former or present officers, directors, partners, or shareholders. Such documents are clearly relevant to a determination of the credibility of potential witnesses, Fed. R. Evid. # 609(a), and "appear[ ] reasonably calculated to lead to the discovery of admissible evidence," Section 1.311(b) of the Commission's Rules. In this connection, the time limit specified in Rule 609(b) of the Federal Rules of Evidence shall be applicable to this request.

<sup>1</sup> By letter dated August 7, 2003, the Bureau withdrew its request to compel the Companies to produce documents responsive to request number 41.

Document Request 10. The Companies objections are sustained. The requested tax returns do not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. In addition, to the extent that the tax returns are requested for the purpose of ascertaining "fundamental information about the organization and relationships of the Companies; the identi[t]y of the Companies' officers, shareholders, and partners; and the nature of the businesses in which the Companies are engaged,"<sup>2</sup> it is noted that such information has already been provided or disclosed by the Companies in response to other document production requests, and in answers to the Bureau's interrogatories and admissions requests.

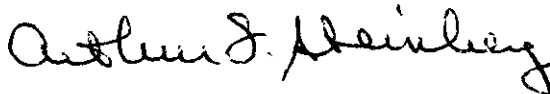
Document Request 20. The Companies objections are overruled. The requested documents are plainly relevant under Issue (a) in this proceeding and "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. The fact that the production of these documents may be time consuming, difficult, or require a great deal of work does not excuse the Companies from their obligation to produce them.

Document Requests 35-38. The Companies objections are overruled in part and sustained in part. Thus, the requested documents should be produced only to the extent that they relate to the Winback Campaign. Such documents "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. However, the Companies need not produce documents relating to "fraudulent marketing practices" in general. The request for those documents goes beyond the scope of the issues in this proceeding. It is well established that even where an issue is posed in general terms, no unrestricted inquiry is authorized. Rather, the issue must be read in light of the facts upon which the designation of that issue was based. *Kittyhawk Broadcasting Corporation*, 20 FCC 2d 1011, 1021 (Rev. Bd. 1969); *Catamount Broadcasters, Inc.*, 56 FCC 2d 730, 736 n.22 (Rev. Bd. 1975); *SRC, Inc.*, 11 FCC 2d 537, 539 (Rev. Bd. 1968). Since the designation of the issues in this proceeding was based solely on the Winback Campaign, inquiry into "fraudulent marketing practices" in general does not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion to Compel Production of Documents, filed by the Bureau on August 5, 2003, IS GRANTED to the extent discussed above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that the Companies SHALL PRODUCE the documents requested by the Bureau within 10 days of the release of this order or within such other period of time as the parties may mutually agree.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge

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<sup>2</sup> Motion to Compel at 10.